

Supreme Court of the United States

October Term, 1940

No. 904

JIM DUCKWORTH,

Appellant,

vs.

THE STATE OF ARKANSAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF ON BEHALF OF APPELLANT.

Harold R. Ratcliff,

Cecil B. Nance,

Counsel for Appellant.

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Supreme Court of the United States

JIM DUCKWORTH,

Appellant,

vs.

THE STATE OF ARKANSAS

Appellee,

MAY IT PLEASE THE COURT:

This is an appeal from a judgement of the Supreme Court of Arkansas, rendered on March 10, 1941. The opinion of the Supreme Court of Arkansas is found in 201 Ark. 1123, 148 S.W. (2nd), 656.

GROUND'S UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

The jurisdiction of this Court is invoked upon the ground that the Supreme Court of Arkansas has sustained a statute of the State of Arkansas against the contention that the said statute is repugnant to and in conflict with

Article 1, Section 8, Clause 3 (the Commerce Clause), of the Constitution of the United States.

STATEMENT OF THE CASE

The appellant, Duckworth, was engaged in transporting whiskey from Cairo, Illinois, to Columbia, Mississippi. He was employed by one Jack Spiers, who was, at the time, engaged in the wholesale whiskey business in Columbia, Mississippi. Spiers held a Federal Wholesale Liquor Dealer's Permit and was the owner of the truck in which the whiskey was being transported. None of the whiskey involved was intended for sale, gift, or other distribution in Arkansas. On the contrary, the whiskey was intended to be sold in the State of Mississippi in violation of the laws of that State. (Record, P. 4)

The appellant, Duckworth, was arrested by an Arkansas State Policeman while he was driving the truck loaded with liquor along a highway in Arkansas, en route from Cairo, Illinois, to Columbia, Mississippi. The whiskey in question bore the United States Internal Revenue stamps but had no Arkansas State tax stamps. Neither the appellant, Duckworth, nor his employer, Spiers, had any permit of any kind from the Commissioner of Revenues of the State of Arkansas, for the transportation of intoxicating liquors. (Record P. 3)

The appellant was arraigned in the Municipal Court at Blytheville, Arkansas, upon a charge of transporting alcoholic liquors into the State without a permit. He entered a plea of not guilty. A fine of \$500.00 was assessed by the Court. The appellant thereupon prayed and perfected his appeal to the Circuit Court of Mississippi County, Arkansas. (Record P. 2)

The case was tried in the Circuit Court of Mississippi County, Arkansas, upon an agreed statement of facts. (Record PP. 3 & 4)

The Circuit Court affirmed the judgement of the Municipal Court but ordered the release of the truck and whiskey in question upon the theory that there was no statute of Arkansas authorizing confiscation thereof, (Record P. 8)

The appellant seasonably filed his motion for a new trial, raising the constitutional question presented in this Court. (Record PP. 8-9-10)

This motion for a new trial was, by the Circuit Court, overruled, and the appellant prayed and perfected his appeal to the Supreme Court of Arkansas. (Record P. 10)

The Supreme Court of Arkansas affirmed the judgment imposing a fine upon the appellant. (Record P. 11)

An appeal from the Supreme Court of Arkansas to this Court has been properly prayed and perfected; this Court has noted probable jurisdiction, and the case stands for hearing upon the constitutional questions raised in the State Courts of Arkansas, and here insisted upon.

ASSIGNMENTS OF ERROR WHICH ARE INTENDED TO BE URGED

Assignments of errors Nos. I, II, III, and IV, are intended to be urged in this Honorable Court.

ARGUMENT

The statutes of the State of Arkansas, the validity of

which are challenged, are set forth in full in the Appendix hereto, as are the rules and regulations of the Commissioner of Revenues of the State of Arkansas, made and promulgated under the authority of the challenged statutes.

The several sections of Pope's Digest of the Statutes of Arkansas, dealing with intoxicating liquors, are all parts of Act 109 of 1935.

Section 14177 of Pope's Digest (Act 109 of 1935, Section 5), of the Statutes of Arkansas, makes it unlawful for any person to ship or transport into the State of Arkansas any distilled spirits from points without the state without first having obtained a permit from the Commissioner of Revenue. The next section of the Digest of the Statutes of Arkansas levies a tax upon all distilled spirits shipped or transported into Arkansas from points without the state.

Under the rules and regulations of the Commissioner of Revenues, it is impossible for anyone except a common carrier to secure such a permit.

It was the contention of the appellant in the Courts of the State of Arkansas that the questioned statute of Arkansas had no application to a shipment of intoxicants of the character here involved; that is a shipment originating in Illinois and merely passing through Arkansas en route to its destination in Mississippi. It was the further position of the appellant that if the Supreme Court of Arkansas adhered to its construction of the statute announced in *Jones vs. State*, 198 Ark. 354, 129 S.W. (2d) 249, then the Statute is void because it is repugnant to and in conflict with Article 1, Section 8, Clause 3, of the Constitution of the United States.

The appellant contended for a construction of the statute in conformity with the opinion of this Court in *U. S. vs. Gudge*, 249 U. S., 373; 63 L. Ed. 653, and in

conformity with the decisions of the Supreme Courts of Tennessee and Virginia, which decisions will be hereinafter cited.

The Arkansas Court rejected that contention and read into the statute the words, "and through", thereby holding that "into" as used in the statute meant "into and through", thus applying the statute to the shipment here involved and refusing to follow *U. S. vs. Gudger*, supra, *McCandless vs. Graham*, 177 Tenn. — 146 S.W. (2nd) 137, and *Surles vs. Commonwealth*, 172 Va. 573, 200 S. E. 636.

The only question presented to this Court is the validity of the Arkansas Statute as construed by the Supreme Court of Arkansas. It is our contention that the statute is unconstitutional and void because of repugnance to and conflict with the Commerce Clause of the Constitution of the United States.

The issues involved are narrow and all that it is necessary to do to determine these issues is to examine the Constitution of the United States, with reference to the interstate transportation of intoxicants, the decisions of this Honorable Court and those of the courts of last resort of several of the states upon the precise question here presented.

It is, of course, elementary that the power to regulate or burden interstate commerce rests solely in the Congress of the United States. The only exceptions to this rule are those instances where the Congress has seen fit to confer regulatory power upon the several states.

The entire scheme of federal liquor control legislation gives to the state wherein liquor is manufactured or consumed plenary powers of regulation and taxation.

All of the federal liquor control legislation denies to the several states, while serving, in the words of the Supreme

Court of Arkansas, as a "mere transportation conduit," any regulatory powers whatsoever.

The 21st Amendment to the Constitution of the United States was adopted after the decision of this Court in *U. S. vs. Gudger*, supra. It must be assumed that the framers of the amendment had that decision in mind. The second section of that amendment is as follows:

"Sec. 2. The transportation into any State, Territory, or Possession of the United States for delivery or use therein, of intoxicating liquors in violation of the laws thereof, is hereby prohibited."

That section of the amendment uses the word "into" as distinguished from "through" giving to it the meaning stated in the *Gudger* case. We quote:

"No elucidation of the text is needed to add cogency to this plain meaning, which would, however, be re-enforced by the context, if there were need to resort to it, since the context makes clear that the word 'into' as used in the statute refers to the state of destination and not the means by which that end is reached—the movement through one state is a mere incident of transportation to the state into which it is shipped."

The Acts of Congress dealing with interstate commerce in intoxicating liquors are the Wilson Act. U.S.C.A. Title 27, Sec. 121, 26 Stat. 313, Webb-Kenyon Act. U.S.C.A. Title 27, Sec. 122, 37 Stat. 699, Reed Amendment, U.S.C.A. Title 27, Sec. 123, 40 Stat. 1057, and the Federal Liquor Enforcement Act. U.S.C.A. Title 27, Sec. 223, 49 Stat. 1928. Not one of these Acts in any way confers upon the state any power whatsoever, to regulate a shipment of intoxicants, which is merely passing through the State. These Acts use the word "into" as distinguished from "through," and nowhere in any of them is there any basis for even a

suspicion that the Congress intended to permit a regulation by a state such as the one here involved.

The result of the decision of the Supreme Court of Arkansas in *Jones vs. State*, supra, and in the case at bar is to confer authority upon the Commissioner of Revenues of Arkansas to regulate and control the strictly internal affairs of Mississippi.

The decision in *Jones vs. State* was handed down some eighteen months before the transportation here involved occurred. That decision was based upon *Haumschildt vs. State*, 142 Tenn. 520, 221 S.W. 196. Prior to the decision in the case at bar, *Haumschildt vs. State* had been attacked as unsound and in conflict with the decisions of this Court, in the Supreme Court of Tennessee. That Court overruled and disapproved *Haumschildt vs. State* in its opinion rendered in *McCanless vs. Graham*, supra. In the unreported opinion in *McCanless vs. Spiers*, decided by the Tennessee Court in January, 1941, in which case the transporter of the liquor had no permit, the Tennessee Court refused to make a distinction between interstate transporters holding permits and those who did not. This opinion is found in the appendix hereto.

Arkansas stands alone in her attempt to burden interstate commerce. Certainly the fact that the sale of intoxicating liquors is illegal in Mississippi furnishes no justification for the interference of Arkansas in her affairs.

It should be stated that it is no violation of any federal law to ship or transport whiskey into Mississippi. The Federal Liquor Enforcement Act of 1936, Title 27, Sec. 223 U.S.C.A. 49 Stat. 1928, only prohibits shipment or transportation into a state in violation of her permit regulations, or where the state of destination prohibits the importation of all intoxicants containing more than 4% alcohol by volume. Mississippi has no permit regulations, and

permits importation of liquors containing not more than 4% by weight, which is, of course, a larger alcoholic content than 4% by volume. Therefore shipments such as the one here involved violate no federal statute—*Dunn vs. U. S.* 98 Fed. (2nd) 119.

Arkansas seeks to harmonize her decision with those of Tennessee by stating in the opinion in the case at bar,

“Consonant with the Tennessee Courts, this Court has held (*Jones vs. State*) that liquor in interstate transit is not subject to confiscation.”

The fallacy of this statement is obvious. The Tennessee statute (Chap. 49 Acts of 1939), provides for the confiscation of liquor unlawfully possessed or transported. There is no provision in the Arkansas Statute whatever for confiscation of illegal liquor. The sole reason the Arkansas Court ordered the return of the liquor involved in *Jones vs. State* is the absence of any provision for confiscation from the statute.

When the Supreme Court of Arkansas said in its opinion in the case at bar,

“In the absence of action by Congress there is no doubt of the right of a State to require those engaged in interstate transportation of liquors . . . to procure from the Commissioner of Revenues a permit . . . ”

it announced as law a ruling which is the exact reverse of the very cornerstone of interstate commerce law; that is that the Congress alone has power to regulate interstate commerce, the states having only such powers as are expressly granted to them by Act of Congress. The only exceptions of which we are aware to this basic principle are those in which the state, in the exercise of its police power over its strictly internal affairs, indirectly and remotely imposes some shadow of a burden upon interstate commerce. The decisions cited by the Arkansas Court to

sustain its position deal solely with cases of this character.

Never has a direct regulation of interstate commerce by a state, without Congressional sanction, been upheld by this Court.

Prior to the enactment of the Wilson Act, the decisions sustaining this view are too numerous and familiar for citation; indeed, those decisions are the father of such Federal legislation as the various liquor control acts, which yield to the states the right to control certain phases of the liquor traffic.

We readily concede that each state has power to absolutely prohibit the manufacture of liquors within its borders and as an incident to that power, prohibit or condition their export from the state—*Ziffrin vs. Reeves*, 60 S. Ct. 163, 308 U. S. 132, 84 L. Ed. 128.

We likewise concede that each state has the power to condition or absolutely prohibit the importation into it of all intoxicants, 21st Amendment, Const. U. S., *State Board of Equalization of California vs. Young's Market Co. et als*, 57 S. Ct. 77, 299 U. S. 59, 81 L. Ed. 38.

However, we most earnestly insist that there is nothing in the Constitution of the United States, the Statutes thereof, or in the decisions of this Court which sanctions the regulation attempted by Arkansas. The constitution of the United States contains an express prohibition of such regulation. Const. U. S., Art. 1, Sec. 8, Clause 3. Tennessee has held that any such regulation would be unconstitutional and void.

“ * * and if the Statutes should be construed so as to prohibit such transportation they would be void because violative of the Commerce clause of the United States Constitution * * * We are further of the opinion, as was the chancellor, that the seiz-

ure was illegal because appellee was engaged in interstate commerce. Under the decisions of the Federal Courts alcoholic beverages retain their interstate commerce character until they actually enter the forbidden state. *United States vs. Gudgey*, 249 U. S. 373, 63 L. Ed. 563; *United States vs. Collins*, 263 Fed. 657; *Whiting vs. United States*, 263 Fed. 477; *Preyer vs. United States*, 260 Fed. 157; *Surles vs. Commonwealth*, 172 Va. 573; 200 S. E. 636."

McCanless vs. Graham, supra.

Virginia has likewise sustained the position taken by the appellant. After accepting the basic principle of the law of interstate commerce, and in discussing the regulatory powers granted by Congress, to the several states, the Virginia Court has said:

"None of these Acts, however, contain any suggestion that a state law can operate upon intoxicating liquor as a subject of interstate commerce while being transported through such state."

And again:

"It may be true, and doubtless is, that no great burden would have been imposed had these defendants been asked to indicate the route which they would take, but if some farmer in Maine wishes to send a truck load of potatoes to California, and if statutes like ours were everywhere in force, he would find it burdensome to mark out in advance the route to be travelled; indeed he might find it impossible."

Surles vs. Commonwealth,
172 Va. 537, 200 S. E. 636.

It requires no fertile imagination to picture the chaos which might ensue should the decision of the Arkansas Court be sustained. If the state has the power to demand a permit from one class of transporter it has the power

to demand it from all. Every automobile, every truck, common carrier or not, every railroad train, every wagon, every boat touching the Arkansas shore, and indeed every person daring to venture into the State of Arkansas is subject to search and possible arrest the moment he or his conveyance touches the soil of Arkansas.

A situation of this character is exactly what Article I, Section 8, Clause 3. Const. U. S. was designed to prevent.

It is our most earnest insistence that the Courts of last resort of Virginia and Tennessee are correct in their determination of the Constitutional question here involved, that *U. S. vs. Gudger* is directly applicable here, and that the Supreme Court of Arkansas has erroneously decided the cause for the reasons set forth herein.

We therefore submit that the judgment of the Supreme Court of Arkansas must be reversed.

Respectfully submitted.

HAROLD R. RATCLIFF,

CECIL B. NANCE,

Counsel for Appellant.

APPENDIX

Section 14177—Pope's Digest of Arkansas Statutes
(Act 109 of 1935)

“14177—(a) PERMIT TO TRANSPORT MUST ACCOMPANY SHIPMENT.—It shall be unlawful for any person to ship or transport or cause to be shipped or transported into the State of Arkansas, any distilled spirits from points without the State, without first having obtained a permit from the Commissioner of Revenues, and no railroad company, or express company, or bonded truck company or truck line operating under a certificate or permit issued by the Arkansas Corporation Commission or river transportation company shall receive for shipment or ship into this state any package or receptacle containing distilled spirits unless a copy of said permit showing that payment of such taxes as are required by law have been made shall accompany such shipment. Said permit shall be in such form as may be prescribed by the Commissioner of Revenues, and all such shipments into the State shall be governed by such rules and regulations as may be promulgated by said Commissioner but said railroad or express company or river transportation company shall not be required to obtain any permit to transport distilled spirits but shall be subject to all rules and regulations promulgated by the Commissioner of Revenues.

(b) It shall be unlawful for any person who is permitted by law to manufacture and/or sell and/or transport distilled spirits to transport or cause to be transported distilled spirits by any means of transportation except as may be prescribed by the rules and regulations of the Commissioner of Revenues, other than/except such spirits may be transported by truck or wagon from and to freight or express depots, to and from the

place or places of business of said permittees and upon the premises of said permittees and from and to one place of business to another place of business of said permittee, provided that the owner of trucks or wagons transporting distilled liquor as aforesaid, excepting trucks and wagons owned and operated by a railroad or express company, or bonded truck company or truck line operating under a certificate or permit issued by the transportation company, or by the person permitted by law to manufacture and/or sell and/or transport distilled spirits shall produce a permit to engage in said transportation and shall execute a bond satisfactory in amount, form and as surety, to be approved by the Commissioner of Revenue, conditioned upon the lawful transportation of such spirits."

**Section 14178—Pope's Digest of Arkansas Statutes
(Act 109 of 1935)**

"14178—TAX ON DISTILLED SPIRITS SHIPPED INTO STATE—EXCEPTION. Every person who purchases distilled spirits and has same shipped into the State of Arkansas from points without the State, as provided in Section 14177 shall at the time said permit is issued, pay a license tax thereon at the rate of five (5c) cents per proof gallon of such distilled spirits contained in such shipment, provided, however, that with respect to such distilled spirits so shipped into the State as are used for blending, rectifying and mixing purposes, such person so using same shall not be required to pay the tax for the privilege of blending, rectifying or mixing as is provided for in this Act to the extent such distilled spirits so brought into the state is used for blending, rectifying and mixing purposes. Id. S 6."

Rules and Regulations of Commissioner of Revenues.

“REGULATIONS GOVERNING THE TRANSPORTING OF LIQUORS.—1. It is unlawful for any person to ship, transport, cause to be shipped or transported into the State of Arkansas any distilled spirits from *points without the state* without having first obtained a permit from the Commissioner of Revenues, or his duly authorized agent.

2. No Railroad Company, Express Company or Truck Line operating under a permit issued by the Arkansas Corporation Commission, or river transportation companies shall receive for shipment into this state any package or receptacle containing distilled spirits, unless a copy of said permit (from the Commissioner of Revenues or his authorized agent) showing that payment of all lawful taxes have been made and which permit and receipt for taxes shall accompany such shipment. The term ‘permit’ as herein used shall mean the duplicate copy of wholesalers order marked ‘permit’ as heretofore authorized and approved by the Commissioner of Revenues, and which describes in detail all liquors to be contained in any shipment. Such permit must be attached to every waybill or bill of lading, and upon delivery of shipment must be attached to duplicate of freight bill and retained by carrier.

3. All truck lines holding certificates issued by the Arkansas Corporation Company, and all river transportation companies, are required to file special application for authority to transport liquors. Upon approval of their application, the Commissioner of Revenues will furnish each such carrier a proper identification card as evidence of their authority to legally transport liquors, provided this section does not apply to railroad and express companies.

4. Pursuant to the authority vested in him by

law, the Commissioner of Revenues will require each eligible trucking company (that is, one duly licensed by the Arkansas Corporation Commission) and hauling liquor from without the State of Arkansas to a point within the State of Arkansas to execute a Surety Bond in the sum of \$2,000.00 and in addition thereto must file an application for a permit and secure a permit as above set forth.

5. All carriers operating within the State of Arkansas and transporting liquor from one point within the State of Arkansas to another point within the State of Arkansas are not required to execute a Surety Bond, but must make application with the Commissioner of Revenues for a permit and must secure a permit authorizing them to engage in the business of transporting alcoholic beverages in this State as above set forth.

6. It shall be lawful for permittees to use their own vehicles in hauling liquor from and to freight or express depots and from and to the place of business of said permittees and upon their premises and from one place of business of permittees to another place of business of said permittees.

7. Contract carriers duly licensed as such by the Arkansas Corporation Commission and holding a bona fide contract may transport liquors intrastate from and on behalf of such wholesale dealer with whom he has a contract from the place of business of the wholesaler to and only duly licensed retail dealers of this state or from any depot or freight warehouse or bonded warehouse to the place of business of the wholesaler.

8. Any transportation company damaging any shipment of liquors entrusted to its care and custody, and in any instances where such transportation company settles with the owner of said liqu-

ors for the damage thus suffered and done, shall have the right to sell such damaged liquors contained in such shipment only to a licensed wholesaler doing business in this State. Any such sale must be accompanied by proper invoice.

9. Railroad and Express Companies operating within the State may, without obtaining a permit for such purpose, transport liquors from a duly licensed wholesaler in this State to a duly licensed retailer in this State, and the burden of proving that such liquors are received from and consigned to a duly licensed dealer shall be upon said Railroad or Express Company. All Bills of Lading and receipts must show name of consignor and consignee and their respective permit numbers.

10. All retail dealers are permitted to transport liquors from the warehouse of a duly licensed wholesaler to their respective places of business, but all such liquor transported must be properly stamped, and must be at all times accompanied by proper invoices and permit numbers. All vehicles so used shall have painted on the side of same "Retail Liquor Dealer" and Permit Number.

11. Any licensed wholesaler may transport liquors from his warehouse to the retailer's place of business, provided all such liquor be properly stamped and be accompanied by proper invoices and permit numbers. All vehicles so used shall have painted on the side of same "Wholesale Liquor Dealer" and Permit Number.

12. It shall be the duty of each carrier unloading liquor in his freight house or warehouse to store same separate and apart from any other freight therein contained in order that such liquor may be easily inspected by the Commissioner of Revenues or his duly authorized agent.

13. All Bills of Lading must specifically show size of the container, quantity and brand of liquor or imported wines or ale and beer (in excess of 5%) contained in any car or truck.
14. Imported wines as used in the proceeding section means wines manufactured outside the State of Arkansas (containing in excess of 3.2%) and the same restrictions as herein imposed upon the transportation of alcoholic liquors shall apply with equal force and effect to the transportation of imported wines and all requirements herein contained with reference to invoices, permit numbers and all other requirements shall be carried out by any carrier transporting imported wines.
15. Contract carriers holding certificates issued by Arkansas Corporation Commission may transport liquor into the State of Arkansas.
16. Bonded warehouses may deliver liquors only to regular licensed wholesalers and the burden shall be upon said warehouses of knowing that person to whom such liquor is consigned is a duly licensed wholesaler. They may use duly licensed common carriers or contract carriers to transport liquor to duly licensed wholesalers doing business in this State and shall at all times accompany each shipment with proper bills of lading, invoice and other identification showing all information necessary to fully comply with the Alcoholic Control Act and the Rules and Regulations promulgated by the Commissioner of Revenues. All vehicles so used shall have painted on the side of same "Bonded Liquor Warehouse" and number of permit. Before bonded warehouses deliver liquor that is unstamped to wholesale dealers they must require the wholesaler to turn over to them liquor shipping permit, showing stamps have been purchased for liquor so withdrawn from warehouse.

17. Any violation of any rule now or hereafter promulgated by the Commissioner of Revenues shall be deemed sufficient cause for the revocation of any permit.

18. Any bond now or hereafter executed by any surety company on behalf of any carrier licensed to transport liquors under the Alcoholic Control Act may be cancelled upon thirty days notice to the principal in said bond and the Commissioner of Revenues, provided such cancellation shall not release the surety from any liability accruing prior to the date of such cancellation.

19. All the shipments of spiritous, vinous or malt liquors to be paid for on delivery, commonly called 'C.O.D.' shipments, into any County, City, Town, District or Precinct, where said Act is in force shall be unlawful and shall be deemed sales of such liquors at the place where the money is paid or the goods delivered; the carrier and his agents selling or delivering such goods shall be liable jointly with the vendor thereof:

D. L. FORD,

Commissioner of Revenues.

SUPPLEMENTAL REGULATION NO. 31 PROMULGATED BY THE COMMISSIONER OF REVENUES FOR THE PURPOSE OF CONTROLLING AND REGULATING THE TRANSPORTATION BY CONTRACT OR PRIVATE CARRIER OF SPIRITUOUS LIQUORS FROM A POINT OUTSIDE THE STATE OF ARKANSAS, TO ANOTHER POINT OUTSIDE THE STATE OF ARKANSAS; THIS REGULATION ISSUED PURSUANT TO THE PROVISIONS OF ACT 108 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1935 AS AMENDED, AND ACT 18 OF THE EXTRAORDINARY SESSION OF 1938 AS AMENDED.

Hereafter all shipments of spirituous liquors into and through the State of Arkansas must be by common carrier, which means by railroad, steamboat, or duly authorized truck line having a permit from the Arkansas Corporation Commission, and is duly licensed by the Interstate Commerce Commission, except as follows:

Any contract or private carrier desiring to transport spirituous liquors, upon which all federal taxes and fees have been paid, from a point in a wet state bordering the State of Arkansas, into and through the State of Arkansas, to another point in another wet state bordering the State of Arkansas, said point not necessarily being the point of final destination of said spirituous liquors, shall first file with the Commissioner of Revenues an application for a permit to transport such spirituous liquors through the State of Arkansas, which permit shall state in detail the point of origin of such shipment, the point where such shipment will enter the State of Arkansas, the route or course to be used in transporting such liquors through the State of Arkansas and the point where such shipment will leave the State of Arkansas.

Said application shall also inform the Commissioner of Revenues of the date or day of the week when such shipments will be made into and through the State, the approximate duration of the entire trip through the State, a description of the vehicle or conveyance in which such shipment will be made including motor and Arkansas license numbers, and the quantities, in case lots, of such liquor and, if for more than one shipment, the regularly established schedule that such contract or private carrier intends to follow in making repeated shipments pursuant to such permit.

Such contract or private carrier shall also file with the Commissioner of Revenues a surety bond in the sum of \$2,000.00, conditioned that he or it will comply with the laws of the State of Arkansas and all regulations issued pursuant thereto in respect to the transportation of liquor through this State in interstate commerce, and conditioned further that in the event said contract or private carrier violates any of the terms and provisions of such laws and regulations including the permit issued to him or it, then the entire penalty of such bond shall be forfeited to the Commissioner of Revenues.

Upon compliance with the above requirements, the Commissioner of Revenues may issue a permit for the purpose stated, which permit shall contain the information furnished in the application and which shall be placed by the permittee in a conspicuous place in or on the cab of the vehicle containing such shipment.

Such permits as are provided for herein shall be issued only in those cases or instances where such contract or private carrier shall enter the State at points known as 'ports of entry' where there is a regularly established revenue inspector's station.

Such permits shall require that the contract or private carrier report to such revenue inspector at the time of entry into this State and allow such inspector to examine and check his shipment.

Upon leaving the State of Arkansas after making such shipment the contract or private carrier shall be required by such permit and by these regulations to report either to the revenue inspector at the boundary line of the State or to the nearest county revenue inspector of the county where the shipment leaves the State, in which instances the

Revenue inspector or county revenue inspector shall also check his permit and make an inspection of the shipment of spirituous liquors.

All such revenue inspectors at ports of entry as above described and the county revenue inspectors at points where such shipments leave the State shall carefully check the permit of such vehicle and the cargo of liquor contained in it, and shall furnish to the Commissioner of Revenues a record of every such permit and shipment that he is required by these regulations to check and inspect.

Every such contract or private carrier making application for a permit to transport such liquor through the State of Arkansas shall procure from the Motor Vehicle Division of the Department of Revenue an Arkansas license for every such vehicle used in making such shipments according to the rates and fees established by such division for such vehicle.

Any failure on the part of such contract or private carrier, after obtaining such permit, to report to the Revenue inspector at the point of entry into this State and at the point where such shipment leaves the State and offers his vehicle for inspection, shall be presumed to be a violation of such permit and these regulations and shall work a forfeiture of the bond herein provided for.

Also any storage, delivery or sale, or attempt to store, deliver or sell any such liquors included in such shipments within the State of Arkansas shall be deemed a violation of said permit and those regulations which shall result in a forfeiture of said bond to the Commissioner, in addition to other penalties provided by law.

Where such shipment is a casual or isolated shipment a separate permit shall be required for each shipment for which a fee of \$25.00 shall be col-

lected from said carrier. Where such carrier operates on a regularly established schedule, a blanket permit covering a period of one year may be issued, for which a fee of \$50.00 shall be collected. Provided that in any instance, such carrier shall procure a separate permit for each and every vehicle used in making such shipments.

JOE HARDIN,

Commissioner of Revenues.

Date:

February 3, 1941.

BEVERAGE DIVISION

SUPPLEMENTAL REGULATION NO. 32 PROMULGATED BY THE COMMISSIONER OF REVENUES TO EXTEND THE PROVISIONS OF SUPPLEMENTAL REGULATION NO. 31 TO INCLUDE THE TRANSPORTATION IN INTERSTATE COMMERCE OF VINOUS LIQUORS, BEER AND MALT BEVERAGES.

Hereafter, any contract or private carrier may apply to the Commissioner of Revenues for the issuance of a permit for the transportation in interstate commerce for vinous liquors, beer and malt beverages in the same manner and only for the purposes stated and described in Supplemental Regulation No. 31, issued and effective on February 3, 1941 by the Commissioner of Revenues, providing for permits for the transportation of spirituous liquors.

The same fees provided for and required in said Supplemental Regulation No. 31 shall also be charged and collected from such contract or private carrier who may apply for a permit or permits hereunder.

All of the fees collected and paid to the Commissioner of Revenues under Supplemental Regula-

tion No. 31, and this Regulation, shall be credited to liquor permits, wine permits, and beer permits, respectively, according to the type of beverage in the shipments for which such permits were issued.

JOE HARDIN,
*Commissioner of Revenues
for State of Arkansas.*

Effective:
February 3, 1941."

The Wilson Act (Title 27, Sec. 121, U.S.C.A., 26 Stat. 313.

"121. STATE STATUTES AS OPERATIVE ON TERMINATION OF TRANSPORTATION; ORIGINAL PACKAGES. All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. (Aug. 8, 1890)"

The Webb-Kenyon Act (Title 27, Sec. 122, U.S.C.A. 37 Stat. 699, 49 Stat. 877).

"122. SHIPMENTS INTO STATES HAVING DRY LAWS; PROHIBITION. The Shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one state, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States,

or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited. (Mar. 1, 1913)"

The Reed Amendment. (Title 27, Sec. 123, U.S.C.A. Repealed June 25, 1936. 49 Stat. 1930)

The Federal Liquor Enforcement Act of 1936 (Title 27, Sec. 223, U.S.C.A., 49 Stat. 1928)

"223. TRANSPORTING INTO STATE WHERE SALE PROHIBITED; PENALTY; STATE DEFINITION OF INTOXICATING LIQUOR ADOPTED.

(a) Whoever shall import, bring, or transport any intoxicating liquor into any State in which all sales (except for scientific, sacramental, medicinal, or mechanical purposes) of intoxicating liquor containing more than 4 per centum of alcohol by volume are prohibited, otherwise than in the course of continuous interstate transportation through such State, or attempt so to do, or assist in so doing, shall: (1) If such liquor is not accompanied by such permit or permits, license or licenses therefor as are now or hereafter required by the laws of such State; or (2) if all importation, bringing, or transportation, of intoxicating liquor into such State is prohibited by the laws thereof; be guilty of a misdemeanor and shall be fined not more than \$1,000.00 or imprisoned not more than one year, or both.

(b) In order to determine whether anyone importing, bringing, or transporting intoxicating liquor into any state, or anyone attempting so to do, or assisting in so doing, is acting in violation of the provisions of this chapter, the definition of intoxicating liquor contained in the laws of such State shall be applied, but only to the extent that sales of such intoxicating liquor (except for scientific, sacramental, medicinal, and mechanical purposes) are prohibited in such State. (June 25, 1936)''

Unreported Opinion of Tennessee Supreme Court, *McCanless vs. Spiers*, decided February 1, 1941.

FILED FEB. 1, 1941

DAVID S. LANSDEN, *Clerk*

GEORGE F. McCANLESS

COMMISSIONER, ETC.

V.

JACK SPIERS

DAVIDSON LAW

MEMORANDUM

In this case, involving confiscation by order of the Commissioner of Finance & Taxation, of a truck load of liquor being shipped across the State, from one foreign State to another, the judgment below is affirmed on the authority of *George F. McCCanless, Commissioner, vs. Grover Graham, Davidson Equity*, decided January 11th, opinion by Mr. Justice McKinney.

CHAMBLISS,
Judge.

OFFICE OF CLERK OF THE SUPREME COURT
FOR THE MIDDLE DIVISION OF
THE STATE OF TENNESSEE

I, DAVID S. LANSDEN, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the Memo Opinion of said Court, pronounced at its December term, 1940, in case of McCanless against Spiers as appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court, at office in the Capitol at Nashville, on this, the 1st day of February, 1941.

DAVID S. LANSDEN, *Clerk.*

By _____ D.C."

(SEAL)